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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,180	07/23/2003	Joseph E. Hoskeer	JHD-001	1469
959	7590	10/26/2005	EXAMINER	
LAHIVE & COCKFIELD, LLP.			STRIMBU, GREGORY J	
28 STATE STREET			ART UNIT	
BOSTON, MA 02109			PAPER NUMBER	

3634

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/626,180	Applicant(s) HOSKEER, JOSEPH E.	
	Examiner Gregory J. Strimbu	Art Unit 3634	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,7,9-14 and 16-20 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

Claims 3-5 and 8 are objected to as being of improper dependent form for further limiting the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Since the applicant has used the transitional phrase "consisting of" any claim depending therefrom cannot add an element or step. See MPEP 2111.03. Accordingly, claims 3-5 and 8 have not been further treated on the merits.

Claims 9 and 20 are objected to because "outward direction of swing" on lines 5-6 of claim 9 and line 5 of claim 20 are grammatically awkward and confusing. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 9-14 and 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "during operation" on lines 13-14 of claim 9 render the claims indefinite because it is unclear what operation the applicant is referring to. Recitations such as "causes the push bar to push the outwardly swinging door" on line 16 of claim 9 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a door opener or the combination of a door opener and a door. The preamble of claim 9 implies the former while the positive recitation of the door on

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line 16 of claim 9 implies the latter. Recitations such as "at least one adjustment mechanism" on lines 1-2 of claim 14 render the claims indefinite because it is unclear if the adjustment mechanism and the slip joint comprise the same element or if the applicant is attempting to set forth another element of the invention in addition to the slip joint set forth above. Recitations such as "trolley means" on line 6 of claim 20 render the claims indefinite because the applicant has attempted to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding or following "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Romney. Romney discloses a kit for converting a vertical garage door opener to an outward door opener, the kit consisting of: a trolley coupling 75 adapted to mount to the movable trolley of the vertical garage door opener; a door coupling 76 adapted to mount to the outwardly swinging door; and at least one push bar 60, 67, 68 having a first end 10E and second end 10D, wherein the push bar is adapted to pivotally couple at the first

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end with the trolley coupling and further adapted to pivotally couple at the second end with the door coupling such that the at least one push bar extends between the movable trolley and the outwardly swinging door to control the opening and closing of the outwardly swinging door in response to the drive mechanism moving the trolley along the track, an adjustment mechanism 66.

Claims 1 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Snazuk. Snazuk discloses a kit for converting a vertical garage door opener to an outward door opener, the kit consisting of: a trolley coupling 32 adapted to mount to the movable trolley of the vertical garage door opener; a door coupling 32 adapted to mount to the outwardly swinging door 10; and at least one push bar 5 having a first end 22 and second end 22, wherein the push bar is adapted to pivotally couple at the first end with the trolley coupling and further adapted to pivotally couple at the second end with the door coupling such that the at least one push bar extends between the movable trolley and the outwardly swinging door to control the opening and closing of the outwardly swinging door in response to the drive mechanism moving the trolley along the track, a slip joint (not numbered, but shown in figure 3 where the tubes 18 and 20 meet) coupled with a spring 24.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-14 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin in view of Snazuk. Martin discloses a door opener for opening an outwardly swinging door mounted for pivotal movement with substantially vertically aligned hinges disposed on one side of the outwardly swinging door such that the door swings outwardly to reveal an opening, the door opener comprising: a track 23, 24 disposed to extend inwardly in a direction substantially opposite from the outward direction of swing of the outwardly swinging door; a trolley 25 slidably coupled with the track, such that the trolley can move along the track directionally generally toward the outwardly swinging door and away from the outwardly swinging door; at least one push bar 30 having a first end (not numbered, but shown in figure 1) and second end (not numbered, but shown in figure 1), the push bar configured for pivotal coupling with the trolley at the first end and with the outwardly swinging door at the second end, the at least one push bar additionally having a slip joint (not numbered, but comprising the sliding connection between the push bar 30 and the first trolley mechanism 29) coupled with a spring (not numbered, but see lines 47-56 and figure 1); wherein movement of the trolley along the track in a direction toward the outwardly swinging door causes the push bar to push the outwardly swinging door outwardly away from the trolley to reveal the opening while the push bar pivots forming an angle with the track increasing in magnitude; and wherein movement of the trolley along the track in a direction away from the outwardly swinging door causes the push bar to pull the outwardly swinging

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door inwardly toward the trolley to conceal the opening while the push bar pivots forming an angle with the track decreasing in magnitude, a drive mechanism 17, a motor 21, first and second trolley mechanisms 29, a stabilizer bar (not numbered, but comprising the element connecting the second end of the stabilizer bar with the door 11 as shown in figure 1). Martin is silent concerning a slip joint for automatically adjusting a length of the at least one push bar during operation.

However, Snazuk discloses a push bar having a slip joint (not numbered, but shown in figure 3 where the tubes 18 and 20 meet) coupled with a spring 24.

It would have been obvious to one of ordinary skill in the art to prevent objects becoming trapped in the springs and to improve the aesthetics of the push bar.

Response to Arguments

Applicant's arguments filed August 9, 2005 have been fully considered but they are moot in view of the new grounds of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The applicant has amended claim 1 to include the more limiting transition phrase "consisting of" and amended claims 9 and 20 to include the new limitation "during operation" on lines 13-14 of claim 9 and line 11 of claim 20. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Strimbu
Primary Examiner
Art Unit 3634
October 21, 2005